

TO: Indiana Charter School Board Members

FROM: Michelle Gough McKeown, J.D. Ph.D.

RE: Legal and Policy Framework re: Drexel Foundation Change in Authorizer Application

Date: 3/25/2016

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## **I. Legal Parameters of Change in Authorizer Requests**

On February 15, the Drexel Foundation for Educational Excellence, Inc. (“Drexel Foundation”) submitted a letter of intent to the Indiana Charter School Board (“ICSB”), and on March 1, the Drexel Foundation submitted a formal Change in Authorizer Application to the ICSB for Thea Bowman Leadership Academy (“TBLA”). This followed a letter of non-renewal dated January 14, 2016 from Ball State University’s Office of Charter Schools (“BSU”) stating that the charter would not be renewed and that TBLA will be required to close June 30, 2016. As the Change of Authorizer application was submitted following a notice of nonrenewal from BSU, the proposal falls under what has been coined Indiana’s “authorizer shopping” statute.

### A. Defining “authorizer shopping.”

“Authorizer shopping” is a parlance specific to those in the charter sector. It is not a term used in any peer-reviewed academic research, based upon key word searches in JSTOR, EBSCO, and WorldCat.<sup>1</sup>

However, a policy brief written by Public Impact on behalf of the National Association of Charter School Authorizers (“NACSA”) in 2016 describes the concept as follows:

“Authorizer shopping happens when a charter school chooses an initial authorizer or changes authorizers specifically to avoid accountability. A low-performing school may shop for a new authorizer to avoid closure, or reopen under a new authorizer after closure. A clear and recent example occurred in 2013 when Ball State University refused to renew seven chronically low-performing charter schools—but three stayed open under new authorizers.”<sup>2</sup>

It is important to note that the three schools described in the policy brief as having stayed open following closure by BSU for underperformance did not: 1) materially change their governance structure; or 2) make other substantive changes designed to address deficiencies identified by the prior authorizer, before seeking reauthorization.

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<sup>1</sup> Key word searches included “authorizer shopping,” “sponsor shopping” and “charter school.”

<sup>2</sup> AUTHORIZER SHOPPING: LESSONS FROM EXPERIENCE AND IDEAS FOR THE FUTURE, Boast et al (2016). National Association of Charter School Authorizers (NACSA). p 4.

## B. Indiana law.

In 2013, language was added to the Indiana Code (P.L. 280-2013) to prevent a charter school that has had its charter non-renewed or terminated from receiving a charter from a new authorizer unless certain procedures are followed. The 2013 legislation created both procedural and substantive requirements before a non-renewed or closed charter may receive a charter from another authorizer. Specifically, Indiana Code 20-24-4-1.5 provides that:

(a) Before an authorizer may issue a charter to an organizer that has had its charter terminated or has been informed that its charter will not be renewed by the organizer's current authorizer, the authorizer must request to have the proposal reviewed by the state board at a hearing. The state board shall conduct a hearing in which the ***authorizer must present information indicating that the organizer's proposal is substantively different in the areas of deficiency identified by the current authorizer*** from the organizer's current proposal as set forth within the charter with its current authorizer.

(b) After the state board conducts a hearing under subsection (a), the state board shall either approve or deny the proposal. If the proposal is denied by the state board, the authorizer may not issue a charter to the organizer.

This Indiana Code provision ensures that any proposal to a new authorizer from an organizer whose charter has been non-renewed or terminated addresses the deficiencies that led to the non-renewal or termination of the charter. Acknowledging and addressing deficiencies is the essence of accountability. Thus, the Indiana statute guards against “authorizing shopping” by adding another layer of oversight over the process with specific requirements to ensure that, if a school is re-authorized, it is done for the right reasons.

## **II. Applying the Statutory Framework**

The primary question addressing the legal and policy concerns of “authorizer shopping” is does the proposal by the Organizer substantively different in the areas of deficiency identified by the [existing] authorizer? Thus, staff first spent time identifying the areas of deficiency identified by BSU.

### A. Due diligence.

The Drexel Foundation filed a Letter of Intent (“LOI”) to submit an application to the ICSB on February 15<sup>th</sup>. Aware of Indiana Code 20-24-4-1.5, ICSB staff immediately began to gather

information relevant to the potential application, including conversations with BSU and other stakeholders, and a review of all available relevant documents.<sup>3</sup> A brief timeline follows:

- On February 19<sup>th</sup>, James Betley called Dr. Bob Marra and spoke to him for 22 minutes regarding the filing of the LOI.
- On February 25<sup>th</sup>, the Drexel Foundation provided ICSB with copies of the “Title I Compliance” and “1-15-15 Conditional Renewal” documents.
- On February 26<sup>th</sup>, the Drexel Foundation provided a copy of the BSU non-renewal letter.
- On February 26, James Betley talked with Dr. Marra a second time for 31 minutes.
- On March 1<sup>st</sup>, the Drexel Foundation formally submitted a Change in Authorizer Application.
- Also on March 1, James Betley talked with Dr. Marra a third time for 26 minutes.
- On March 2<sup>nd</sup>, John Forst, attorney for one of the bond holder, spoke with James Betley and Michelle Mckeown. Mr. Forst also provided a copy of the letter dated February 29, 2016, indicating that the Drexel Foundation was in default of its loan agreement with the bond holders.
- On March 3<sup>rd</sup>, Parent Taryl Bonds provided copies of two (2) audit documents from Dr. Carpenter re: TBLA, which he had received through a public records request.
- On March 3<sup>rd</sup>, James Betley sent an email to Dr. Marra officially requesting a formal letter listing the deficiencies leading to non-renewal of the TBLA charter.
- On March 4<sup>th</sup>, ICSB posted and opened a public comment forum on the ICSB website regarding TBLA.
- On March 16<sup>th</sup>, ICSB staff held the applicant capacity interview. Staff had Dr. Benjamin Jenkins from Central Michigan University, who was one of the external reviewers, join for the interview.
- On March 22<sup>nd</sup>, ICSB staff held a public hearing in Gary, Indiana to receive public comment.
- On March 23<sup>rd</sup>, ICSB staff received from BSU a copy of documents prepared for the Drexel Foundation reconsideration hearing via FedEx pursuant to the March 3<sup>rd</sup> request.<sup>4</sup>

After considering the above information, staff identified the following areas of deficiency.

*B. Addressing specific deficiencies*

Underneath each identified deficiency, we provide the analysis regarding whether it has been addressed by the proposal.

1) Declining academic performance

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<sup>3</sup> Sources: 1-15-15 TBLA Conditional Renewal Letter; 2013 TBLA Governance Audit by Dr. Brian Carpenter; 2015 Governance/Operations Audit by Dr. Brian Carpenter; 2/29/16 Bond Default Notice; Indiana Department of Education 2015-16 Title I, A; Title II A On-site monitoring preliminary report; January 14, 2016 TBLA Non-Renewal Letter.

<sup>4</sup> The Drexel Foundation initially appealed BSU’s non-renewal decision, but formally withdrew its appeal on February 23<sup>rd</sup>.

We believe that this was sufficiently addressed in the supplemental information provided by TBLA on March 22<sup>nd</sup>. As noted in the recommendation form that addresses education capacity, it is important to acknowledge that while TBLA has had declining performance, it has also generally outperformed the other schools in the corporation, both charter and traditional public schools.

Phalen Leadership Academy 1 (“PLA-1”) has demonstrated strong academic performance. It has outperformed comparable Indianapolis Public Schools (“IPS”) on Math, ELA, and IREAD-3 passages rates, and it has outperformed other public schools of choice with the exception of the Butler Laboratory School, an IPS magnet school, which outperformed PLA-1 on Math passage by 6% points.

The submitted education plan provides a suitable plan for improving the performance at TBLA. See the staff recommendation form for more information.

- 2) Issues with State and federal financial reporting, management, oversight and legal compliance, including the failure to comply with Indiana Open Door and Public Access Laws.

As described in the 2013 and 2015 audit documents, one of the fundamental identified deficiencies was the capacity of the current board to properly self-manage the school, including financial reporting, management, oversight and legal compliance. During the interview Keisha White, current Drexel Foundation board chair, acknowledged that the current board underestimated the knowledge, time and capacity needed to operate a K-12 school. We believe that this issue will be addressed through the complete reconstitution of the current board and the hiring of Phalen Leadership Academy (“PLA”) as the school’s Education Service Provider (“ESP”). For example, as the Drexel Foundation acknowledges in their supplemental response, one of the biggest weaknesses on the current board was a lack of relevant legal expertise. The addition of Tony Walker, an attorney with over 20 years of experience who served on the State Board of Education for four years, will fill this gap. The Drexel Foundation has, both in the supplemental information, and in subsequent phone and email communications, identified potential board members with K-12 administrative, legal, financial, compliance and community engagement expertise. Should this board be reconstituted as described, we believe they have sufficient capacity and experience to govern themselves appropriately and to hold PLA accountable for financial and academic outcomes.

In addition, the supplemental response identifies specific actions that will be taken by the new board and PLA to ensure future federal financial reporting, management, oversight and legal compliance.

- 3) Title I, Title II Compliance, including:
  - a. A lack of “highly qualified teachers” as defined by federal law;
  - b. Improper or incorrect payment of instructional personnel from Title I and Title II funds;
  - c. A lack of financial and monitoring controls over the use of Federal dollars;
  - d. A failure to submit required reports and submitted reports not aligning with the

- approved grant;
- e. A failure to properly design and implement a Schoolwide plan;
- f. The provision of programing using federal funds that doesn't match was approved in the FY2016 grant;
- g. A lack of compliance with the required Title I federal equipment and inventory list; and
- h. Missing or unaccounted for Title I equipment.

ICSB staff has been in contact with the Indiana Department of Education ("IDOE") not only to determine the full extent of the Title I and Title II non-compliance, but also the compliance timeline- that is, how has TBLA been responding to the non-compliance and what is the best path forward. The general consensus has been that in the last year, TBLA lacked the capacity to address federal compliance issues. While the existing administration has recently become more responsive in providing the information required by IDOE related to Title compliance (e.g., the federal equipment inventory lists), there are a number of areas that still need to be fully addressed. We note that a recent email from Elizabeth Lamey, Title I Grant Specialist, to TBLA commends the current individual responsible for making the necessary changes for all of her "hard work."

However, this process often takes time and additional resources, including the assistance of individuals who understand federal compliance. In IDOE's experience, this sometimes requires a change in administration and/or personnel. While IDOE cannot comment on the particular proposal before the ICSB to reconstitute TBLA's board and to hire PLA as TBLA's ESP, if such changes include specific plans to address the remaining Title I issues with the proper resources and/or personnel, IDOE believes this would be a positive step forward to TBLA eventually becoming fully Title I compliant.<sup>5</sup>

TBLA also addressed the lack of "highly qualified teachers" in its supplemental response, pledging to hire highly qualified teachers through "a rigorous, multistage screening process led by Phalen," with PLA having "complete oversight of the process, including all final decision-making rights regarding staff hiring." During the interview, Mr. Phalen indicated that the head of human resources for PLA is based out of Chicago, which we believe will be an asset in the identification of teachers and administrators in the area. The supplemental response also described mandatory and ongoing professional development. One area which ICSB may want to probe further is to ask for specific information for the criteria used to hire and evaluate new teachers (indicators of quality) and is there a particular model or system used in these activities (e.g. Danielson Framework)?

#### 4) Evidence of a satisfactory resolution of a required facility review.

The facility review was provided as part of the additional documentation. The required response was provided to the Diocese of Gary as they are the lessor of the building in question. At this time, the

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<sup>5</sup> This statement was approved by Jeff Barber, IDOE Director, Federal Title Grant Programs and Support.

Drexel Foundation is attempting to get a copy of the response from the Diocese.

- 5) Failure to comply with certain Bond covenants, including:
  - a. inadequate recordkeeping with respect to financial and human
  - b. failure to provide the Bond Trustee with (i) its 2015 audit, (ii) its calculation of compliance with its Debt Service Coverage Ratio, and (iii) its officer's certificate certifying compliance with its covenants under the Loan Agreement; and
  - c. inability to produce audited financial statements for its prior Fiscal Year.

This was addressed in the supplemental response (“We have contacted both the IDOE and the bondholder, and to this point have cleared all previous findings”). The 2015 Audit is not complete (due primarily to the fact that it has not been a priority for AQS, the school’s former ESP), but is currently in progress with Donovan Certified Public Accountants and Advisors, and is expected to be finalized by April 15, 2016.

- 6) Certain compliance issues related to the Drexel Foundation’s governing documents, specifically its bylaws.

Each authorizer has different requirements regarding the contents of organizer governance documents. Our review of Drexel’s current Bylaws indicates that they made the revisions recommended by the 2013 Governance Audit as required by Ball State.

However, the only actual statutory requirement is that an organizer’s governing documents include the following language: “Upon dissolution: (1) the remaining assets of the charter school shall be distributed first to satisfy outstanding payroll obligations for employees of the charter school, then to creditors of the charter school, then to any outstanding debt to the common school fund; and (2) remaining funds received from the department shall be returned to the department not more than thirty (30) days after dissolution.” *See* Indiana Code 20-24-3-3.

The supplemental response indicates that this requirement will be adopted at the next meeting of the Drexel Foundation board. There are other minor technical issues with the Bylaws (not required by statute) which can be easily addressed in future Drexel Foundation board meetings.